

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 03-17954, entitled: "RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1363; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF FINANCING THE COSTS OF CERTAIN UTILITY CONNECTION FEES AND INCIDENTAL COSTS RELATED THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on February 10, 2003, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____unanimous_____
_____;
voted against the same: _____none_____;
abstained from voting thereon: _____none_____;
or were absent: _____Ohnstad_____.

WITNESS my hand officially this 10th day of February, 2003.

-SS.-- _____
Marita Herold, CMC
City Clerk

RESOLUTION NO. 03-17954

RESOLUTION RELATING TO SPECIAL IMPROVEMENT
DISTRICT NO. 1363; DECLARING IT TO BE THE
INTENTION OF THE CITY COUNCIL TO CREATE THE
DISTRICT FOR THE PURPOSE OF FINANCING THE COSTS
OF CERTAIN UTILITY CONNECTION FEES AND
INCIDENTAL COSTS RELATED THERETO THROUGH THE
ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS
SECURED BY THE CITY'S SPECIAL IMPROVEMENT
DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. **Proposed Improvements; Intention To Create District.** The City proposes to undertake certain local improvements to benefit certain property located in the City, which consist of the installation of sanitary sewer and water transmission mains to serve properties in Cedar Park Subdivision, Phase I ("Cedar Park") and Briarwood Subdivision, Phase I and Phase II ("Briarwood"), recently annexed to the City. As a condition to receiving sewer and/or water services from the City, each property to be served must pay system development fees, construction fees and franchise fees for each of the utility services received (the "Utility Fees"). The total estimated costs of the Utility Fees to be paid by the properties in Cedar Park and Briarwood are \$1,278,019. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a special improvement district (the "District") for the purpose of financing costs of the Utility Fees and paying costs incidental thereto, including costs associated with the sale and the security of special improvement district bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund") (collectively, the "Project"). The total estimated costs of the Project, including such incidental costs, to be financed by the Bonds are \$1,456,000. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Project in an amount not less than \$1,456,000.

Section 2. **Number of District.** The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1363 of the City of Billings, Montana.

Section 3. **Boundaries of District.** The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit B hereto.

Section 4. **Benefited Property.** The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A and B are hereby declared to be the special improvement district and the territory which will benefit and be benefited by the Project and will be assessed for a portion of the costs of the Project as described in Section 5. The property included within said limits and boundaries is hereby declared to be the property benefited by the Project.

Section 5. **General Character of the Project.** The District will finance certain costs and expenses of the City of Billings in providing water and/or sewer services to the property in the District. The City of Billings has by Resolution of the City Council established fees for receiving a connection to its water and sewer system as follows:

(a) Water System

- (1) a Construction Fee equal to 7-1/4 cents for each square foot of the lot, tract or parcel to be served;
- (2) a System Development Fee equal to \$1,075 per 3/4 inch meter; and
- (3) a Franchise Fee equal to 4% of the combined amount of the fees above

(b) Sewer System

- (1) a Construction Fee equal to 7-1/4 cents for each square foot of the lot, tract or parcel to be served;
- (2) a System Development Fee equal to \$850 per 3/4 inch meter; and
- (3) a Franchise Fee equal to 4% of the combined amount of the fees above.

Specifically, for the properties included in Cedar Park, the District will finance the costs of the City's Construction Fee, System Development Fee and Franchise Fee associated with providing water to the properties in the Cedar Park as shown on Exhibit B (the "Cedar Park Utility Fees") and related costs (the "Related Costs").

For the properties in Briarwood, the District will finance the costs of the City's Construction Fee, System Development Fee and Franchise Fee associated with providing water and sewer to the properties in Briarwood as shown on Exhibit B (the "Briarwood Utility Fees") and related costs (the "Related Costs").

The Related Costs include the City's cost in creating the special improvement district, the costs associated with the sale and issuance of the Bonds and the deposit to the City's Revolving Fund, which are estimated to equal 14% of the Utility Fees to be financed or \$177,997, assuming all properties in the District finance the costs of the Utility Fees.

The Utility Fees and Related Costs to be financed for each lot, tract or parcel of land is shown on Exhibit B.

Section 6. **Option to Prepay Utility Fees.** Property owners wishing to pay the Utility Fees up front rather than finance them through the District may do so by delivering to the City Finance Office, 210 North 27th Street, Billings, Montana, no later than February 10, 2003, a check, cash or money order in the amount of the Utility Fees attributable to that parcel of land. Once paid, the property to which the Utility Fees are attributable will be removed from the District, and the owners of such property will not receive the mailed notice required by Section 12 hereof.

Section 7. **Assessment Method.**

7.01 **Method; Property To Be Assessed.** All properties within the District are to be assessed for a portion of the costs of the Project, as specified herein. The costs of the Project shall be assessed against the property in the District benefiting from the Project, based on the lump sum method of assessment described in Sections 7-12-4162 to 7-12-4164, M.C.A., as particularly applied and set forth in this Section 7.

7.02 **Lump Sum – Utility Fees and Related Costs.** Each lot, tract or parcel of land in the District using the District to finance the cost of the water and/or sewer Utility Fees attributable thereto shall be assessed for its respective fee on a lump sum basis in accordance with the City's fee schedule as applied to the parcel of land, all as shown on Exhibit B hereto. Related Costs shall be assessed against each lot, tract or parcel pro rata based on the principal amount of lump sum assessment of each parcel's Utility Fees.

7.03 **Assessment Methodology Equitable and Consistent with Benefit.** This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable and in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts and parcels to be assessed therefor within the District.

Section 8. **Payment of Assessments.** The special assessments for the costs of the Project shall be payable over a term not exceeding 20 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to the sale of the SID bonds.

Section 9. **Method of Financing; Pledge of Revolving Fund; Findings and Determinations.** The City will issue the Bonds in an aggregate principal amount not to exceed \$1,465,000 in order to finance the costs of the Project. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

9.01 **Estimated Market Value of Parcels.** The market value of the lots, parcels or tracts in the District as of the date of adoption of this resolution, as shown on the records of the County Assessor for property tax purposes, ranges from \$9,000 to \$1,855,100 and is set forth in Exhibit C hereto (which is hereby incorporated herein and made a part hereof). The average market value of the property in the Cedar Park is \$92,855. The average market value of the property in Briarwood is \$148,406. The special assessments to be levied under Section 7 against each lot, parcel or tract in the District is less than the increase in estimated market value of the lot, parcel or tract as a result of the construction of the Project.

9.02 **Diversity of Property Ownership.** There are a total of 88 parcels within the Cedar Park, of which 82 are developed. There are a total of 255 parcels within Briarwood, of which 231 are developed. There are a total of 30 undeveloped lots, of which one owner owns five (5) parcels, one owner owns four (4) parcels and 21 property owners own two (2) parcels each.

9.03 **Comparison of Special Assessments and Property Taxes and Market Value.** The principal amount of special assessments to be levied against the property in Cedar Park range from \$1,920 to \$52,683.00, with the mean being \$3,602. The principal amount of special assessments to be levied against the property in Briarwood range from \$1,317 to \$73,319, with the mean being \$4,531. The value of parcels of land in the District substantially exceeds the amount of the assessments to be levied against them.

Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent) and any delinquent property taxes (as well as any known industrial development bonds therefore issued and secured by a mortgage against a parcel in the District) against each lot, tract or parcel in the District in comparison to the estimated market value of such lot, tract or parcel after the Project, the City concludes that, overall, the estimated market value of the lots, tracts or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit C.

9.04 **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against properties in the District shows that of the 343 properties, 10 properties are delinquent and is set forth in Exhibit C.

9.05 **The Public Benefit of the Project.** The City has previously determined that annexation of the property in the District to the City of Billings and the connection of such property to the City's water and sewer system is in the best interest of the City and the public and the City has determined that it is in the best interests of the people in the District to provide a mechanism to finance the costs of the Utility Fees.

Section 10. **Reimbursement Expenditures.**

10.01 **Regulations.** The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to

be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02 **Prior Expenditures.** Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Project have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03 **Declaration of Intent.** The City reasonably expects to reimburse the expenditures made for costs of the Project out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$1,456,000 after the date of payment of all or a portion of the costs of the Project. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

10.04 **Budgetary Matters.** As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Project, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

10.05 **Reimbursement Allocations.** The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Project. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Project and shall specifically identify the actual original expenditure being reimbursed.

Section 11. **Public Hearing; Protests.** At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and

expense of making the Project may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (February 28, 2003), written protest against the proposed Project, or against the extension or creation of the District or both. Such protest must be in writing, identify the property in the District owned by the protestor and be signed by all owners of the property. The protest must be delivered to the City Clerk, who shall endorse thereon the date of its receipt by him or her. This Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on Monday the 10th day of March, 2003, at 6:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. **Notice of Passage of Resolution of Intention.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the *Billings Times*, a newspaper of general circulation in the county on February 13 and February 20, 2003, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address (unless such person has paid the Utility Fee in accordance with Section 6 hereof), on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 10th day of February, 2003.

Mayor

Attest:

City Clerk

EXHIBIT A

MAP OF DISTRICT

EXHIBIT B

LISTING OF PROPERTIES IN THE DISTRICT